

IBLA 84-320 Decided June 10, 1985

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. ORMC 028587 through ORMC 028598.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

When Congress enacted sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), it intended to extinguish those claims for which timely filings were not made. Evidence of subjective intent to hold the claims is not relevant, as the failure to file an affidavit of assessment work or notice of intent to hold in a timely manner, in and of itself, causes the claim to be lost. The statute specifically provides that failure to comply with applicable filing requirements leads automatically to loss of the claim.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

For the purposes of 43 CFR 3833.2-1, "timely filing" means being filed within the time period prescribed by law, or received by Jan. 19, after the period prescribed by law, in an envelope bearing a clear postmark affixed by the United States Postal Service bearing a date within the period prescribed by law. When documents submitted for filing have been lost in the mail and thus not received by BLM, such loss must be borne by the claimant.

APPEARANCES: Paul E. Hammond, Portland, Oregon, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Paul E. Hammond (Hammond) has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 20, 1984, which rejected documents submitted by Hammond evidencing his performance of annual assessment work in the year 1982 for the benefit of those claims listed in Appendix A to this decision. The stated reason for rejection was Hammond's failure to file affidavits of assessment work or notice of intent to hold for the year 1982 on or before December 30, 1982, which, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), rendered the subject mining claims abandoned and void.

The subject claims were located by appellant in 1964 and 1971. Notices of location were filed with BLM on August 22, 1979, pursuant to 43 U.S.C. § 1744(b) and assigned serial numbers ORMC 028587 through ORMC 028598. The record contains copies of the "proof of labor" filed in 1979, 1980, 1981 and 1983 which bear a BLM date stamp showing receipt by BLM. The copy on the 1982 proof of labor bears a February 21, 1984, date stamp and was submitted by Hammond with his notice of appeal bearing the same date stamp.

In his statement of reasons for appeal, Hammond notes that the evidence clearly indicates that he never had any intent to abandon the claim in question. Referring to the proof of labor filed with the notice of appeal Hammond states that the document had been recorded with the county recorder and that, on December 17, 1982, the proof of labor had been mailed to the Oregon State Office, BLM. He alleges that "if the said notice was not duly filed, it was the fault or negligence of the U.S. Postal Service, an affiliate of the Bureau of Land Management and the Department of the Interior." He then states it would be unjust and inequitable to apply the conclusive presumption of abandonment provisions of section 314 of FLPMA, *supra*, to him. Appellant contends the evidence clearly shows that he had not intended to abandon the claims and the application of 43 U.S.C. § 1744(c) (1982), to him would constitute a denial of due process, citing *Locke v. United States*, 573 F. Supp. 472 (D. Nev. 1982).

On May 8, 1984, this Board suspended consideration of mining claim recordation cases, including this case, pending determination of an appeal of *Locke v. United States*, *supra*, *sub nom.* *United States v. Locke*, No. 83-1394, by the United States Supreme Court. On April 1, 1985, the Supreme Court issued a decision, *United States v. Locke*, 105 S. Ct. 1785, in which the Court found section 314 of FLPMA to be constitutional, within the affirmative powers of Congress, and not violative of the due process of mining claimants.

[1] Appellant's contention that the evidence clearly demonstrates that he had no intent to abandon the claims is not relevant to this determination. The subjective intent to retain a claim, no matter how well supported by the evidence, will not keep a claim from being forfeited in the event of failure to file an affidavit of assessment work or a notice of intent to hold annually prior to December 31. "Congress intended in § 314(c) to extinguish those claims for which timely filings were not made. Specific evidence of intent to abandon is simply made irrelevant by section 314(c); the failure to file

on time, in and of itself, causes a claim to be lost." United States v. Locke, *supra* at 1795-96. "The statute explicitly provides that failure to comply with the applicable filing requirements leads automatically to loss of the claim." *Id.* at 4438.

[2] It having been made clear by the Supreme Court that failure to file leads automatically to the extinguishment and loss of a mining claim, the question then is whether appellant's mailing of the documents can constitute filing. Applicable regulations define "timely filed," within the context of 43 CFR 3833.2-1, to mean "being filed within the time period prescribed by law, or received by January 19 after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law." 43 CFR 3833.0-5(m). Appellant's submission for calendar year 1982 was never received by BLM. Thus, assuming the evidence containing the 1982 proof of labor for appellant's claims was lost by the Postal Service, that fact would not excuse appellant's failure to meet the cited regulations. Rachel G. Conover, 75 IBLA 323 (1983); Hughes Minerals, Inc., 74 IBLA 217 (1983); Everett Yount, 46 IBLA 74 (1980); Regina McMahon, 56 IBLA 372 (1981). This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must bear the consequences of the loss of his filings, as filing is accomplished only when a document is delivered to and received by the proper BLM office. ^{1/} Depositing a document in the mail does not constitute delivery, and thus does not constitute filing. 43 CFR 1821.2-2(f). Appellant has not submitted evidence that the filings required by 43 U.S.C. § 1744 (1982), were received by BLM in 1982 or prior to January 19, 1983, as provided by 43 CFR 3833.0-5(m). The BLM decision is therefore affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski C. Randall Grant, Jr
Administrative Judge

Administrative Judge

^{1/} A return receipt card for a document sent by certified or registered mail showing receipt by the proper BLM office would be sufficient proof of receipt. It is also a common practice for claimants to request that a copy of the cover letter be signed and date stamped at the BLM office and returned to the claimant to evidence delivery.

APPENDIX A

| <u>Claim Name</u> | <u>MCR Number</u> |
|-----------------------|-------------------|
| Thorp No. 1 | ORMC 028587 |
| Thorp No. 3 Fraction | ORMC 028588 |
| Thorp No. 5 | ORMC 028589 |
| Thorp No. 6 | ORMC 028590 |
| Thorp No. 8 | ORMC 028591 |
| Thorp No. 13 | ORMC 028592 |
| Thorp No. 14 | ORMC 028593 |
| Thorp No. 17 Fraction | ORMC 028594 |
| Thorp No. 18 Fraction | ORMC 028595 |
| Thorp No. 19 Fraction | ORMC 028596 |
| Thorp No. 22 Fraction | ORMC 028597 |
| Thorp No. 23 Fraction | ORMC 028598 |

